

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Annie TUMMINO, *et al.*,

Plaintiffs,

v.

Dr. Margaret HAMBURG, Commissioner of
Food and Drugs, *et al.*,

Defendants.

)
)
)
) No. 12-CV-763 (ERK/VVP)
)
) (Korman, J.)
) (Pohorelsky, M.J.)
)
)
)
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NOTICE OF MOTION

PLEASE TAKE NOTICE that, on a date and at a time to be set by the Court, or as soon thereafter as counsel can be heard, in the Courtroom of the Honorable Edward R. Korman, Senior United States District Judge for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, defendants Dr. Margaret Hamburg, Commissioner of Food and Drugs, and the Honorable Kathleen Sebelius, Secretary of Health and Human Services, will move this Honorable Court, pursuant to Fed. R. Civ. P. 62(c) and Fed. R. App. P. 8(a)(1)(A), (C), for an order staying the judgment of this Court entered on April 10, 2013 (ECF No. 87), and this Court's Memorandum and Order of April 5, 2013 (ECF No. 85), pending appeal to the United States Court of Appeals for the Second Circuit.

If the Court is not inclined to grant the motion for a stay pending appeal, the government moves for a temporary administrative stay of the Court's Order and judgment pending resolution by the Court of Appeals of a stay motion to that court under FRAP 8(a)(2). Such an administrative stay would allow both this Court and the Court of Appeals to consider a stay pending appeal on a non-emergency basis, with full briefing. If this Court enters a temporary administrative stay but denies a stay pending appeal, defendants will promptly inform this Court of any Court of Appeals decision regarding a stay pending appeal. In view of the short time before

the government is required to take steps to comply with the Court's order, which is effective on May 6, we respectfully request a ruling on the stay motion by the end of the day on Thursday, May 2, so that, if necessary, we may seek an emergency stay from the Court of Appeals.

In support of the instant motion, the government respectfully relies on the Memorandum of Law and the Declaration of Dr. Janet Woodcock (with exhibit), which are filed herewith, and copies of which have been served on counsel for the plaintiffs in accordance with the certificate of service.

Dated: May 1, 2013

Respectfully submitted,

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By: /s/ {FILED ELECTRONICALLY}
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CERTIFICATE OF SERVICE

I, F. Franklin Amanat, hereby certify under penalties of perjury that on this 1th day of May, 2013, I did cause true and correct copies of the above and foregoing instruments, Notice of Defendant's Motion for Stay pending Appeal, together with a Memorandum of Law in Support thereof, and a Declaration of Janet Woodcock, M.D., with exhibit, to be served by electronic mail and ECF notification on the following persons:

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